IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.9210 OF 2004

Anil D. Kulkarni. ...Petitioner.

Versus

The State of Maharashtra & Ors. ...Respondents.

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Mr. K. S. Dewal for the Petitioner.

Mr. A. H. Palekar, AGP for Respondent No.1 and 2.

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CORAM : DR. D.Y. CHANDRACHUD, J.

April 26, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing and final disposal.

2. The Petitioner is a member of a Co-operative Housing Society, registered under the provisions of the Maharashtra Co-operative Societies' Act, 1960. The Petitioner was elected to the

Managing Committee of the Society together with six other members for the term 1997-2000. According to the Petitioner, he tendered his resignation from the Managing Committee on 5th December 1999 and an audit of the Society was conducted by the Auditor for the period 1st April 2000 to 31st March 2001. The report of the Auditor found that there were irregularities which were committed by the members of the former Managing Committee. On 2nd June 2003, the present Managing Committee lodged a complaint at the Wagle Estate Police Station, Thane, through its Secretary for offences punishable under Sections 406, and 420 read with Section 34 of the Penal Code. Crime No.111 of 2003 was registered. The Co-operative Society which is the Third Respondent to these proceedings, filed an application before the Divisional Joint Registrar, Co-operative Societies for sanction to prosecute the members of the erstwhile Managing Committee for offences punishable under Section 146 of the Maharashtra Co-operative Societies' Act, 1960. The sanction was granted by the Divisional Joint Registrar under Section 148(3) on 15th September 2004.

3. In so far as the Petitioner is concerned, his contention was and is that he ceased to be a member of the Managing Committee on 5th December 1999, whereas the offences are alleged to have been committed during the period 1st April 2000 to 31st March 2001. The Divisional Joint Registrar has taken the view that the resignation that was submitted by the Petitioner was not placed before the Managing Committee and had not been accepted. Now, it is a settled principle of law, in view of the decision of a Division Bench of this Court in **Arun Trivikramrao Rajurkar vs. Gowardhan Janardhan Khotre**, 1982 Mh. L. J. 576 that a resignation tendered by a member of a Managing Committee of a Co-operative Society operates from the date of its tender and no acceptance of the resignation is necessary. The Division Bench held that there is no need for acceptance of such resignation. The Divisional Joint Registrar was, therefore, not correct in forming the view that the resignation did not take effect until it was accepted. The grant of sanction to prosecute the Petitioner, therefore, suffers from an infirmity on that ground. However, the question as to whether the Petitioner had in fact, tendered his

resignation on the records of the Co-operative Society is a matter which still needs consideration. In these proceedings under Article 226, apart from the typed copy of the alleged resignation, there is nothing on the record to show that the resignation had, in fact, been tendered or that it had been placed on the record of the Co-operative Society. In these circumstances, it would be appropriate to allow the petition in so far as the Petitioner is concerned, by setting aside the order of the Divisional Joint Registrar, confining this order to the case of the Petitioner and by directing that there should be a fresh consideration by the Divisional Joint Registrar in the light of the observations contained herein above. The impugned order of the Divisional Joint Registrar dated 15th September 2004 is accordingly quashed and set aside in so far as the Petitioner is concerned. Application No.3 of 2002 shall stand restored to the file of the Divisional Joint Registrar, who shall pass a fresh order on the application in the light of the observations contained hereinabove. All the rights and contentions of the parties are kept open to be urged before the Divisional Joint Registrar.

4. The petition is accordingly disposed of.

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